

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JOHN GRIFFIN HEADRICK,  
Petitioner,

v.

RICHARD MORGAN,  
Respondent.

Case No. C05-5226FDB

ORDER DISMISSING PETITION

The Magistrate Judge recommends that this 28 U.S.C. § 2254 petition be denied as untimely, as he was convicted and sentenced on October 22, 1992, there is no evidence of a direct appeal having been filed. He filed a personal restraint petition in State court on October 22, 1992, the court granted Petitioner the opportunity to who the matter was not now time-barred, and Petitioner responds arguing not that less than one year has passed between the date his conviction and sentence became final, but arguing instead that his constitutional rights were violated because the charges against him were brought by information and not grand jury indictment.

The Magistrate Judge recommends that the petition be denied as the Federal provision for grand jury indictment for a capital or otherwise infamous offense has not been applied to the states. *Branzburg v. Hayes*, 408 U.S. 665, 688 n. 25 (1972).

Petitioner Headrick has filed objections arguing that the Magistrate Judge's conclusion is in error, that the right to indictment by grand jury was secured through the Enabling Act that Congress drafted for the prospective State of Washington and which President Benjamin Harrison declared to be law on

1 November 11, 1889. Furthermore, no provision was made for “piecemeal” adoption, rather a state,  
2 including Washington had to adopt the entire U. S. Constitution.

3 The Court is not convinced by Petitioner’s arguments. This petition is untimely.


4 NOW, THEREFORE, the Court, having reviewed the petition for *habeas corpus*, the Report and  
5 Recommendation of Judge Karen L. Strombom, United States Magistrate Judge, and the remaining record,  
6 does hereby find and ORDER:

7 (1) The Court adopts the Report and Recommendation.

8 (2) Petitioner's federal *habeas corpus* petition is DISMISSED.

9 (3) The Clerk is directed to send copies of this Order to Petitioner and to Judge Strombom.

10 DATED this 10<sup>th</sup> day of August 2005.

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14 FRANKLIN D. BURGESS  
UNITED STATES DISTRICT JUDGE  
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